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Economic, Social and Cultural Rights: the experience of the Brazilian shadow report

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1. Introduction

The objective of this article is to focus on the Brazilian human rights movement's experience of producing a shadow report¹ under the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as the impact of this experience on the actual protection of these rights. In other words, the aim is to evaluate the way in which Brazilian civil society, through the production of the shadow report, encouraged the UN Committee on Economic, Social and Cultural Rights (ESCR Committee), responsible for overseeing the implementation of the ICESCR at the national level, to adopt suggestions and recommendations to the Brazilian State with a view to advancing the protection of economic, social and cultural rights, and to examine the strategies used by Brazilian NGOs for following up on these recommendations.

This article initially analyzes the relation between the Brazilian State and international human rights instruments in order to put into context Brazil's recent insertion in the arena of international human rights protection. The process

leading up to the production of the ICESCR shadow report, its effect on the Committee's considerations and the impact of such considerations on Brazil's domestic regime of economic, social and cultural rights protection will then be evaluated.

2. Brazil and international instruments for the protection of human rights

The country's democratization process, which began in 1985, signalled the strengthening of Brazilian civil society through various forms of organization, mobilization and networking. It also led to a redefinition of institutional agendas, which, each in their own way, began responding to new social demands. This slow and gradual democratic transition demanded a new statute to rebuild the socio-political pact. This process culminated in the promulgation of a new Brazilian Constitution on October 5, 1988. Its content marks the break with the authoritarian military regime of 1964, and reflects the 'post-dictatorship' democratic consensus.

Since the beginning of the democratization process and, in particular, with the promulgation of the 1988 Federal Constitution Brazil has ratified important international instruments for the protection of human rights.² As well as the

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¹ Shadow reports, developed by non-governmental organizations (NGOs), provide additional information and critique official government reports submitted to entities such as UN treaty-monitoring bodies. States that are parties to treaties such as the ICESCR must present periodic reports to these bodies in order to fulfill part of their obligations under the treaty.

² Among these international human rights treaties, the following are worthy of mention: a) the Inter-American Convention to Prevent and Punish Torture, ratified on July 20, 1989; b) the Convention against Torture and other Cruel, Inhuman or Degrading Treatment, ratified on September 28, 1989; c) the Convention on Children's Rights, ratified on September 24, 1990; d) the International Covenant on Civil and Political Rights, ratified on January 24, 1992; f) the American Convention on Human Rights, ratified on September 25, 1992; g) the Inter-American Convention to Prevent, Punish and



significant advances resulting from the acceptance by the Brazilian State of the normative character of the international human rights protection system, conceived as the exercising of civil, political, social, economic and cultural rights, the post-1988 period represents the most important era of human rights standards development in Brazil's legislative history. Indeed, most of these standards were formulated and adopted in national law as a result of and inspired by the 1988 Constitution.

Brazilian history bears out the relationship between democracy and human rights, two concepts that cannot be dissociated one from the other. In other words, there can be no democracy without human rights or human rights without democracy. It is worth noting that it was only with the process of democratization that the Brazilian State began ratifying the most relevant international human rights treaties, among them the ICESCR in 1992.

3. The process of producing the Brazilian Shadow ICESCR Report

Although the Brazilian State has been a party to the ICESCR since 1992 and is therefore obliged to present regular reports to the ESCR Committee under the terms of article 16, by 2000 it had not yet done so. Brazil did however present an official report in 1994 in the case of the International Covenant on Civil and Political Rights, also ratified in 1992.

This omission on the part of the Brazilian State led Brazilian civil society to commit itself at the Fourth National Human Rights Conference (1999) to producing and presenting a non-governmental report to the UN on the implementation of the ICESCR in the country. The Human Rights Commission of the Brazilian Parliament and the National Human Rights Movement were charged with carrying out research and holding seminars with stakeholders to provide the basis for the report.

The Fourth National Human Rights Conference set out the following objectives: a) to encourage the Brazilian State to present the country's official report and advance in the compliance with its obligations under the

Covenant; b) to inform the international community and Brazilian public opinion about the situation in the country with regard to economic, social and cultural rights, and to incorporate these rights into the National Human Rights Program, initially adopted in 1996; and c) to publicize among Brazilian society and the country's human rights movement, in particular, the existence of the ICESCR and the commitments made by States-parties, as well as to reaffirm the Covenant's justiciability at the domestic level.

The process of producing the shadow report involved the voluntary cooperation of over 2,000 people, with hearings in 17 states. Consideration was given to official data and to the methodology presented in the 'UN Manual for the Preparation of Reports on Human Rights'. The factors affecting and the difficulties involved in the implementation of economic, social and cultural rights in Brazil were pointed out, as were the needed legislative and administrative measures. The report was structured around 16 topics: 1) indigenous peoples, descendants of *quilombolas* (communities founded in the past by escaped slaves) and other minorities; 2) the environment and sustainable development; 3) discrimination and inequalities; 4) gender; 5) the agrarian situation; 6) local economic development; 7) work and unionization; 8) social security; 9) rest and leisure; 10) the family; 11) health; 12) food; 13) children and adolescents; 14) education; 15) culture; and 16) housing.

Given the Brazilian State's persistent failure to present its official report, in April 2000, Brazilian non-governmental organizations submitted their report to the ESCR Committee in Geneva, before the official report. The traditional dynamic, according to which the State presents its official report and civil society then presents a counter-report or parallel report, was thus inverted. It was only in 2003 that the Brazilian State presented and defended the official report before the ESCR Committee.

The fact that the original objectives set out by the Fourth National Human Rights Conference mentioned above were achieved should be highlighted: the Brazilian State finally presented its official report; publicity and visibility of the country's economic, social and cultural rights situation were ensured domestically and internationally; in 2002, the Brazilian State adopted the National Human Rights Program II, which incorporated economic, social and cultural rights, and set out 518 related goals; and the existence of the ICESCR and the commitments made by the Brazilian State as a State-party were publicized

Eradicate Violence against Women, ratified on November 27, 1995; h) the Protocol to the American Convention regarding the Abolition of the Death Penalty, ratified on August 13, 1996; i) the Protocol to the American Convention regarding Economic, Social and Cultural Rights (San Salvador Protocol), ratified on August 21, 1996; j) the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, ratified on June 28, 2002; and k) the two Optional Protocols to the Convention on Children's Rights, regarding children's involvement in armed conflicts, the sale of children and child prostitution and pornography, ratified on January 24, 2004. In addition to these advances, one might mention Brazil's recognition of the Inter-American Court of Human Rights' jurisdiction in 1998 and the ratification of the International Criminal Court's statute on June 20, 2002.

among Brazilian society and the country's human rights movement.

Civil society also updated the 2000 report in order to send a more recent version to the ESCR Committee, which had put the discussion of the Brazilian report on the agenda of its May 2003 working session in Geneva. The updating of the shadow or parallel report led to a greater emphasis on the exercising of economic, social and cultural rights with respect to gender, racial, ethnic and regional inequalities.

4. Economic, social and cultural rights in light of gender, race, ethnicity and regional inequalities

The updated report pointed out that Brazil ranks fourth in the world in terms of concentration of wealth, behind Sierra Leone, the Central African Republic and Swaziland. The average income of the richest 10% of the population is thirty times higher than that of the poorest 40%. Furthermore, inequality has increased systematically in Brazil and is currently significantly greater than it was in the first half of the 1980s. There is much regional variation, however, with the most extreme disparity in the Northeast region, where 45% of the population lives in poverty.

Besides regional disparities, the shadow report stated that racial and gender constants cut across the various levels of inequality and social exclusion, indicating processes of 'feminization' and 'ethnicization' of poverty. In other words, poverty and socio-economic inequality disproportionately affect women, Brazilians of African descent and the indigenous population. Black rural women are the very poorest group in Brazil.

The Human Development Index (HDI) of the Afro-Brazilian population is between 0.575 and 0.607, well below the national average of 0.73. The HDI of the black and mixed-race population would rank 109th in the world, whereas in 2002 Brazil as a whole ranked 73rd out of 173 countries.

At work, men earn on average 42% more than women. There is strong occupational segmentation in the labour market: men are concentrated in occupations in better-paying sectors — the industrial and productive sectors — while women carry out activities related to personal and social services, associated with lower pay. Black and mixed-race Brazilians earn on average 40-50% less than whites. White men have the highest earnings, followed by white women and black men, while women of African descent are at the bottom of the pyramid, earning significantly less.

As for the right to education, the proportion of illiterate women remains higher than that of men. Women rural workers and black women have an illiteracy rate three times higher than that of white women. Education still has patriarchal and sexist foundations, and therefore fails to carry out its role as an agent of change in cultural standards. The shadow report thus urges the promotion of a model of education based on respecting diversity, valuing universal human rights and solidarity, affirming the right to difference and equity, and combating patriarchal domination, racism, xenophobia, sexism and all forms of discrimination and prejudice.

With regard to the right to adequate housing and the agrarian situation, Brazil still has the world's second highest level of land concentration. There are at present some 4.8 million landless families in the country. The concentration of wealth, land and power in rural Brazil reduces or cuts off the access of rural workers and their families to a dignified existence. This leads to migration to urban centres and growing social inequality both in rural and urban areas. Few peasant farmers, gatherers, riverside populations and *quilombolas* hold deeds to their land or have access to sufficient credit, which forces many families to leave the countryside and causes social injustice and violence. This situation affects rural, black and indigenous women disproportionately, increasing their poverty and exposing many to the risk of sexual exploitation.

Regarding the right to adequate food, about 21% of the population does not have sufficient income to acquire the calorie intake required for survival. Households headed by men are 20% less likely to be poor than those headed by women. The health portrait is equally critical. Brazil's health system fails by far to respond to the basic needs of the population in general, and of women in particular. The shadow report underlined the urgency of ensuring full health care for women, taking into account differences in age, profession, racial/ethnic group and residence (urban/rural). To illustrate, when looking at the health situation of women of African descent in Brazil, one needs to take into account certain socio-economic data: 85% of them are below the poverty line; they have less access to quality health care than white women; and they are more likely to suffer from and die of certain diseases.

Maternal mortality is one of Brazil's most serious health problems and it is estimated that 96% of these deaths could be avoided. The Northern region of the country has the highest rate of maternal death, followed by the Centre-West, the Northeast, the South and the Southeast. This further confirms that the rate of maternal death is an indicator of social inequality and of the poor and

unequal standards of women's health care in the country.

While studies show that about a million women resort to abortion in Brazil each year, unsafe abortions are the fourth cause of maternal death in and the fifth cause of women's hospital admissions in the public health system. The setting up and expansion of legal abortion services (abortion is only legal in Brazil in cases of pregnancy resulting from rape or of risk to the woman's life), as well as of family planning services, are urgent and fundamental to women's health. The shadow report recommends that Brazil review its punitive and repressive anti-choice legislation and consider abortion a public health problem and not a criminal matter.

In light of this context, the report emphasized as fundamental the incorporation of gender, racial, ethnic and regional perspectives throughout the formulation, implementation and evaluation of public policies aimed at social inclusion. Mechanisms of social accountability must also be created that include technical-scientific indicators to monitor the policies' effectiveness and quality. The two-dimensional character of justice is thus consolidating itself: justice as redistribution and as the recognition of identities. These are the two essential strategies to tackle the pattern of structural inequality so prevalent in Brazilian reality.

5. The impact of the alternative report on the ESCR Committee's recommendations

The Brazilian alternative report was organized in three parts: a) introduction and a general view of the report; b) economic, social and cultural rights from the perspective of gender, race and ethnicity; and c) recommendations and final remarks.

On April 5, 2003, the Economic, Social and Cultural Rights Committee's session was devoted mostly to NGO reports and presentations. On May 8 and 9, the Brazilian government delegation defended its official report. The Committee had previously formulated 52 questions to the delegation concerning the implementation of economic, social and cultural rights in Brazil. The session was concentrated on the Brazilian responses to these questions. Brazil expressed the view that the respect for this range of rights is a central priority for the new government, emphasizing the adoption of new social programs, e.g. for the eradication of starvation (the so-called* "*Fome Zero*" or "*Zero Hunger*" program).

On May 23, 2003, the Committee made public the conclusions and recommendations related to the Brazilian report by means of the document *Consideration of Reports submitted by States Parties under Articles 16 and 17 of the*

*Covenant*³. The Committee write that it welcomed the submission of the initial report by Brazil, which had been prepared in conformity with the Committee's guidelines, but regretted its tardiness. It also criticized the fact that the Brazilian delegation did not present enough experts in the field of economic, social and cultural rights, "who could provide more information to the Committee on the concrete measures taken by the State-party to implement its obligations under the Covenant".

Highlighting the positive aspects, the Committee noted, among others: a) the incorporation of a wide range of economic, social and cultural rights in the Brazilian Constitution of 1988; b) the adoption of the National Human Rights Program II; c) the naming of national *rapporteurs* to examine the situation of economic, social and cultural rights in Brazil; d) the Brazilian State's positive position with regards to the draft ICESCR Optional Protocol⁴; and e) the pro-active participation of civil society in monitoring the implementation of the Covenant, including the provision of a large amount of information to the Committee.

When commenting on the factors and difficulties impeding the implementation of the Covenant, the Committee highlighted the persistence of extreme inequalities and social injustice that negatively affect the implementation of the rights guaranteed by the Covenant.

Of particular concern to the Committee were: a) the persistence of extreme inequalities between the various geographic regions; b) the lack of adequate human rights training in the State-party, in particular with respect to the rights enshrined in the Covenant, especially for the judiciary, law enforcement officials and other actors responsible for the implementation of the Covenant; c) the widespread and deeply-rooted discrimination against Afro-Brazilians, indigenous peoples and minority groups; d) the widespread discrimination against women; e) the high rate of maternal mortality due to illegal abortions, as well as the persistence of forced sterilization; f) the prevalence of sexual and domestic violence; g) the high incidence of trafficking in women for the purpose of sexual exploitation; and h) the significant increase in HIV/AIDS-related mortality among women and children.

The Committee made a series of suggestions and recommendations, most notably: a) the need for measures to reduce the persistent and extreme inequalities and imbalances in the

³ Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.87, 30th session, 5 May, 23 May, 2003.

⁴ The ICESCR Optional Protocol aims to incorporate the right to individual complaints for the protection of economic, social and cultural rights before the Economic, Social and Cultural Rights Committee.

distribution of resources, income and access to basic services between the various geographical regions; b) the need for measures to ensure the domestic implementation of the rights spelled out in the ICESCR in the form of concrete remedies of a legal or other nature; c) the need for human rights training programs for members of the judiciary, law enforcement officials and other actors responsible for the implementation of Covenant; d) the need for effective measures to counter discrimination and ensure equal opportunities for Afro-Brazilians, indigenous peoples and other minorities, especially in the areas of employment, health and education; e) the need for measures to ensure equality between men and women, especially in the area of work and employment; f) the need for measures, including a review of existing legislation, to protect women from the effects of clandestine and unsafe abortions, and to ensure that women do not resort to such harmful procedures; g) the need for effective measures, including the enforcement of existing legislation and the extension of national awareness campaigns to eliminate all forms of violence against women; and h) the need for measures to provide sexual and reproductive health services to the population.

The Committee further recommended that the Brazilian State widely disseminate its concluding observations at all levels of society and, in particular, among State officials and the judiciary. It also encouraged the Brazilian State to “continue to consult with non-governmental organizations and other members of civil society when preparing the next periodic report”.

The NGOs and members of Brazilian civil society that participated in the process consider that the Committee’s concluding observations incorporated the main concerns and demands presented in the shadow report. This would indicate that the shadow report has had a positive impact on the Committee, both by the concerns it raised and the suggestions and recommendations it made.

It is worth noting that both in the principal subjects of concern and in the suggestions and recommendations, the Committee emphasized gender, race, ethnicity and regional inequalities when focusing on the protection of economic, social and cultural rights — this had also been one of the main focuses of the parallel report.

6. Conclusions

The Brazilian experience regarding the ICESCR shadow report reveals the importance of civil society’s role in the protection of economic, social and cultural rights. This central role not only afforded greater visibility to economic, social and cultural rights as true human rights, but also constituted a legitimate form of social pressure on the Brazilian State to advance in the protection and implementation of these rights, with a constructive

dialogue with civil society as a starting point. It is clear that the parallel report had an impact on the production of the official report, on the adoption of the National Human Rights Program II and on the important recommendations made by the Committee to the Brazilian State.

The central challenge now is to implement the gains obtained internationally at the domestic level. An important strategy used by civil society early on, in particular by the Inter-American Economic, Social and Cultural Rights Platform⁵, was to ensure wide-ranging publicity of the Committee’s suggestions and recommendations by means of posters and leaflets. With this publicity as their starting point, a number of non-governmental organizations, each in their own way, have put pressure on the State to implement the Committee’s recommendations. For example, the women’s movement has used the Committee’s recommendations to encourage the Brazilian State to modify domestic criminal legislation that contains discriminatory provisions in relation to women, to revise legislation dealing with abortion as a crime so that it may be conceived of as a health policy issue, to adopt policies to combat maternal mortality, and to enact specific legislation to prevent, combat and eradicate violence against women. The national *rapporteurs* on economic, social and cultural rights have, within their mandate, also given special consideration to the Committee’s recommendations.

As such, Brazilian civil society is part of a complex and plural system for following up on the gains achieved internationally and for demanding that the Brazilian State comply with essential international standards for the defence of human dignity.

On the one hand, civil society remains vigilant as to the need to improve the follow-up and justiciability of economic, social and cultural rights. Examples of such improvements would be: the formulation of technical-scientific indicators to measure the advances in making these rights effective; the adoption of an Optional Protocol to the ICESCR that introduces a right of petition at the international level; litigation strategies in domestic forums and within the Inter-American human rights protection system; and the submission of complaints to the UN thematic *rapporteurs* working on these rights.

On the other hand, civil society recognizes that the experience of the shadow report was not

⁵ The Inter-American Platform for Human Rights, Democracy and Development is a Latin American network which aims to develop a culture inspired by peace and social justice, based on the indivisibility of human rights, democracy and development. It has national branches in Ecuador, Argentina, Venezuela, Uruguay, Brazil and Cuba. For more information, see www.pidhdd.org.

only a novelty, but also fundamental for the affirmation of economic, social and cultural rights. In other words, these rights are not the result of generosity, charity or compassion on the part of the State, but are existing rights to be claimed within the internationally-recognized framework of the integrity, indivisibility, interdependence and inter-

relatedness of human rights, that also emphasizes the value of diversity.

Brazilian civil society strongly believes in the importance of the Committee's recommendations as a strategic tool for social change, particularly for raising and strengthening the level of respect, protection and promotion of economic, social and cultural rights in Brazil.

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